IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Crl. Revn. No. 1462 of 2006

DATE OF DECISION : 01.09.2006

Fakir Chand

.... PETITIONER

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

Present: Mr. Suryakant Gautam, Advocate,
for the petitioner.

* * *

Petitioner Fakir Chand, who is complainant in case FIR No. 124 dated 12.7.1995 under Sections 342, 323, 325, 506, 34 IPC, registered at Police Station Sadar Panipat, has filed this revision petition against the judgment dated 3.8.2005 passed by Additional Sessions Judge, Panipat, whereby while upholding conviction of respondents No.2 to 7 under Sections 325, 323, 342 and 506 IPC, they have been ordered to be released on probation of good conduct under Section 360 of the Code of Criminal Procedure (hereinafter referred to as `the Code') for a period of two years. Each of them has also been further ordered to pay compensation of Rs. 2000/- for payment to injured Faqir Chand and Ramesh in the ratio of 70:30.

2. In the aforesaid FIR, respondents No.2 to 7 were tried and convicted by Judicial Magistrate Ist Class, Panipat, vide judgment dated 5.3.2004 and they were sentenced to undergo rigorous imprisonment for a period of eight months and to pay a fine of Rs. 300/- each under Section 325 IPC; for a period of three months and to pay a fine of Rs. 200/- each under Section 323 IPC, for a period of three months each under Section 342 IPC and for a period of three months each under Section 506 IPC. In appeal filed by them, their conviction has been upheld, but while hearing on the quantum of sentence, they have been released on probation of good conduct under Section 360 of the Code for a period of two years. Each of them has

also been further ordered to pay compensation of Rs. 2000/- for payment to injured Faqir Chand and Ramesh in the ratio of 70:30. Hence this revision petition has been filed by the petitioner-complainant.

3. I have heard counsel for the petitioner and gone through the impugned judgment.

4. Counsel for the petitioner submits that the appellate court, while releasing respondents No.2 to 7 on probation under Section 360 of the Code, has not recorded any special reason for not releasing the accused on probation under the Probation of Offenders Act, 1958 (hereinafter referred to as `the Probation Act'). Therefore, the impugned judgment regarding the release of accused on probation is illegal. In support of his contention, counsel relied upon a decision of the Supreme Court in ***Daljit Singh and others*** v. ***State of Punjab through Secretary Home Affairs,*** 2006 (3) Law Herald (SC) 2312.

5. After hearing counsel for the petitioner and going through the impugned judgment, I do not find any substance in the contention raised by the counsel.

6. Section 360 of the Code provides that when any person not under twenty-one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less and is not a previous convict, the Court may, having regard to his age, character or antecedents and the circumstances in which the offence was committed, if deem it expedient, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meanwhile to keep the peace and be of good behaviour. Section 361 of the Code provides for special reasons to be recorded by the court in certain cases where in any case the Court could have dealt with the accused either under Section 360 or under the provisions of the Probation Act, but has not done so, then it shall record in its judgment the special reasons for not having done so.

7. Since in the instant case, the appellate court has released the

accused on probation under Section 360 of the Code by recording reasons in its judgments, no further reason was required to be recorded for not granting the benefit of the Probation Act. In my opinion, the judgment cited by counsel for the petitioner also does not lay down such proposition. In this judgment, it has been observed that the legislature in its wisdom has obliged the Court under Section 361 of the Code to apply one of the other beneficial provisions; be it Section 360 of the Code or the provisions of the Probation Act. It is only by providing special reasons that their applicability can be withheld by the Court. In the instant case, the appellate court has opted for Section 360 of the Code by recording reasons, as case of the accused was squarely falling under this provision. I do not find any illegality in the impugned judgment.

8. Dismissed.

September 01, 2006 **(SATISH KUMAR MITTAL)**
ndj **JUDGE**